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18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN FRANCISCO DIVISION**

21 ERICA FRASCO, individually and on behalf
22 of all others similarly situated,

23 Plaintiff,

24 v.

25 FLO HEALTH, INC., GOOGLE, LLC,
26 FACEBOOK, INC., APPSFLYER, INC., and
27 FLURRY, INC.,

28 Defendants.

Case No.: 3:21-cv-00757-JD

**DEFENDANT FLO HEALTH, INC.'S
ANSWER TO PLAINTIFFS'
CONSOLIDATED CLASS ACTION
COMPLAINT**

CONSOLIDATED COMPLAINT FILED:
September 2, 2021

SARAH WELLMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FLO HEALTH, INC., GOOGLE, LLC,
FACEBOOK, INC., APPSFLYER, INC., and
FLURRY, INC.,

Defendants.

JUSTINE PIETRZYK, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FLO HEALTH, INC., GOOGLE, LLC,
FACEBOOK, INC., APPSFLYER, INC., and
FLURRY, INC.,

Defendants.

JENNIFER CHEN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FLO HEALTH, INC., GOOGLE, LLC,
FACEBOOK, INC., APPSFLYER, INC., and
FLURRY, INC.,

Defendants.

TESHA GAMINO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FLO HEALTH, INC., GOOGLE, LLC,
FACEBOOK, INC., APPSFLYER, INC., and
FLURRY, INC.,

Defendants.

1 LEAH RIDGWAY and AUTUMN MEIGS,
2 individually and on behalf of all others
3 similarly situated,

4 Plaintiffs,

5 v.

6 FLO HEALTH, INC., GOOGLE, LLC,
7 FACEBOOK, INC., APPSFLYER, INC., and
8 FLURRY, INC.,

9 Defendants.

10 MADELINE KISS, individually and on behalf
11 of all other similarly situated,

12 Plaintiff,

13 v.

14 FLO HEALTH, INC., GOOGLE, LLC,
15 FACEBOOK, INC., APPSFLYER, INC., and
16 FLURRY, INC.,

17 Defendants.

PRELIMINARY STATEMENT

Flo Health, Inc. (“Flo”), a leader in the “fem-tech” space, plays a critical role in supporting and advancing women’s health in the United States and abroad. The Flo App, designed and operated in consultation with a medical board of over 100 international experts, provides access to information about women’s reproductive health and allows its users to track information related to all phases of the reproductive cycle. It is the #1 OB-GYN-recommended app for period and cycle tracking based on a survey of U.S. OB-GYNs.¹

Flo’s mission is to create a better future for female health by helping women harness the power of their body signals. The Flo App is available in more than 20 languages and in more than 200 countries, including in many communities where access to information regarding women’s reproductive health is not otherwise available. Flo offers much of its services for free, as the company believes essential, evidence-based health information should be available to everyone. Starting in 2017, in recognition of Flo’s worldwide campaign to spread awareness about women’s reproductive and sexual health issues, the United Nations Population Fund (the U.N.’s sexual and reproductive health agency) began partnering with Flo in furtherance of that mission.

Plaintiffs’ claims against Flo are based on a fundamental misunderstanding of how the App operates, alleging that Flo shared “health information” with third parties for advertising purposes. This is completely untrue. Flo does not sell any user data and never has. Nor has Flo ever shared data with anyone else for advertising purposes. Instead, as disclosed in the App’s Terms of Use and Privacy Policy—which Plaintiffs and all putative class members affirmatively consented to—the App collects user data to operate the App, analyze user trends, and improve the user experience. Specifically, as Flo disclosed in every version of its Privacy Policy, the App used third-party tools provided by analytics divisions of larger tech companies “to monitor and analyze trends, usage and activities” based on certain aggregated, de-identified user data. Flo specifically named these third parties in the Privacy Policy, including Defendants Google, Facebook, and Flurry (collectively, the “Analytics Defendants”).

¹ Based on a survey of 225 U.S. OB-GYNs who recommend apps for period and cycle tracking.

ANSWER

Defendant Flo Health, Inc. (“Flo”) hereby answers the Consolidated Class Action Complaint (the “Complaint”) of Plaintiffs Erica Frasco, Sarah Wellman, Justine Pietrzyk, Jennifer Chen, Tesha Gamino, Leah Ridgway, Autumn Meigs, and Madeline Kiss (together, “Plaintiffs”) as follows:

SUMMARY OF ALLEGATIONS

1. Admitted

2. Flo states that the Flo App provides information regarding women’s health including an ovulation calendar, period tracker, pregnancy guide, and wellness and lifestyle tracker. Flo further states that the App uses artificial intelligence. Flo otherwise denies the allegations in Paragraph 2.

3. Admitted.

4. Flo’s website speaks for itself, and therefore no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 4.

5. The purported survey questions from the Flo App speak for themselves. Flo further states that users can enter their names, email addresses, dates of birth, and places of residence into the Flo App. Flo otherwise denies the allegations contained in Paragraph 5.

6. The purported survey questions from the Flo App speak for themselves, therefore no response is required. To the extent a response is required, Flo denies the allegations contained in Paragraph 6.

7. Paragraph 7 contains legal conclusions to which no response is required. To the extent a response is required, Flo states that the Flo App allows users to answer various optional survey questions regarding, among other things, menstruation, body weight, sleep, sexual activity, mood, headaches, breast tenderness, acne, or fatigue. Flo otherwise denies the allegations contained in Paragraph 7.

8. The Complaint fails to identify when and where Flo allegedly made the statement referred to in the Paragraph 8. To the extent it exists, the purported statement speaks for itself. Flo otherwise denies the allegations in Paragraph 8.

1 9. Paragraph 9 states a legal conclusion to which no response is required. To the extent
2 a response is required, Flo denies the allegations in Paragraph 9.

3 10. Denied.

4 11. Flo's Privacy Policies and website speak for themselves, and therefore no response
5 is required. To the extent a response is required, Flo denies the allegations in Paragraph 11.

6 12. Paragraph 12 states legal conclusions to which no response is required. Furthermore,
7 Flo's Privacy Policies speak for themselves, and therefore no response is required. To the extent a
8 response is required, Flo denies the allegations in Paragraph 12.

9 13. Denied.

10 14. Denied.

11 15. Denied.

12 16. Denied.

13 17. Denied.

14 18. Denied.

15 19. Denied.

16 20. Denied.

17 21. Paragraph 21 states legal conclusions to which no response is required. Furthermore,
18 the "report published by the Wall Street Journal in February 2019" speaks for itself. To the extent a
19 response is required, Flo denies the allegations in Paragraph 21.

20 22. Paragraph 22 states legal conclusions to which no response is required. Flo further
21 states that the FTC Complaint referenced in Paragraph 22 speaks for itself. To the extent a response
22 is required, Flo denies the allegations in Paragraph 22.

23 23. The report referenced in Paragraph 23, including footnote 6 thereto, speaks for itself,
24 and therefore no response is required. To the extent a response is required, Flo denies the allegations
25 in Paragraph 23.

26 24. The quoted article and statement referenced in Paragraph 24, including footnote 7
27 thereto, speak for themselves, and therefore no response is required. To the extent a response is
28 required, Flo denies the allegations in Paragraph 24.

25. Paragraph 25 states legal conclusions to which no response is required. Furthermore, the FTC Settlement referenced in Paragraph 25 and the press release cited in footnote 8 thereto speak for themselves. To the extent a response is required, Flo states that it entered into a Settlement with the FTC that involved no admission of wrongdoing. Flo otherwise denies the allegations in Paragraph 25.

26. The report referenced in Paragraph 26 speaks for itself, and therefore no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 26.

27. Denied.

28. Denied.

JURISDICTION AND VENUE

29. Paragraph 29 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 29.

30. Paragraph 30 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 30.

31. Paragraph 31 contains legal conclusions to which no response is required. In addition, Flo's Terms of Use is a document that speaks for itself. To the extent a response is required, Flo denies the allegations in Paragraph 31.

32. Flo lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 32.

33. Paragraph 33 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 33.

34. Paragraph 34 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 34.

PARTIES

35. Flo lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 35.

36. Flo lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 36.

1 37. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
2 allegations in Paragraph 37.

3 38. Paragraph 38 states legal conclusions to which no response is required. To the extent
4 a response is required, Flo denies the allegations contained in Paragraph 38.

5 39. Denied.

6 40. Denied.

7 41. Paragraph 41 states a legal conclusion to which no response is required. To the extent
8 a response is required, Flo denies the allegations in Paragraph 41.

9 42. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
10 allegations in Paragraph 42.

11 43. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
12 allegations in Paragraph 43.

13 44. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
14 allegations in Paragraph 44.

15 45. Paragraph 45 states legal conclusions to which no response is required. To the extent
16 a response is required, Flo denies the allegations contained in Paragraph 45.

17 46. Denied.

18 47. Denied.

19 48. Paragraph 48 states a legal conclusion to which no response is required. To the extent
20 a response is required, Flo denies the allegations in Paragraph 41.

21 49. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
22 allegations in Paragraph 49.

23 50. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
24 allegations in Paragraph 50.

25 51. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
26 allegations in Paragraph 51.

27 52. Paragraph 52 states legal conclusions to which no response is required. To the extent
28 a response is required, Flo denies the allegations contained in Paragraph 52.

1 53. Denied.

2 54. Denied.

3 55. Paragraph 55 states a legal conclusion to which no response is required. To the extent
4 a response is required, Flo denies the allegations in Paragraph 41.

5 56. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
6 allegations in Paragraph 56.

7 57. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
8 allegations in Paragraph 57.

9 58. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
10 allegations in Paragraph 58.

11 59. Paragraph 59 states legal conclusions to which no response is required. To the extent
12 a response is required, Flo denies the allegations contained in Paragraph 59.

13 60. Denied.

14 61. Denied.

15 62. Paragraph 62 states a legal conclusion to which no response is required. To the extent
16 a response is required, Flo denies the allegations in Paragraph 62.

17 63. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
18 allegations in Paragraph 63.

19 64. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
20 allegations in Paragraph 64.

21 65. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
22 allegations in Paragraph 65.

23 66. Paragraph 66 states legal conclusions to which no response is required. To the extent
24 a response is required, Flo denies the allegations contained in Paragraph 66.

25 67. Denied.

26 68. Denied.

27 69. Paragraph 69 states a legal conclusion to which no response is required. To the extent
28 a response is required, Flo denies the allegations in Paragraph 69.

1 70. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
2 allegations in Paragraph 70.

3 71. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
4 allegations in Paragraph 71.

5 72. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
6 allegations in Paragraph 72.

7 73. Paragraph 73 states legal conclusions to which no response is required. To the extent
8 a response is required, Flo denies the allegations contained in Paragraph 63.

9 74. Denied.

10 75. Denied.

11 76. Paragraph 76 states a legal conclusion to which no response is required. To the extent
12 a response is required, Flo denies the allegations in Paragraph 76.

13 77. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
14 allegations in Paragraph 77.

15 78. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
16 allegations in Paragraph 78.

17 79. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
18 allegations in Paragraph 79.

19 80. Paragraph 80 states legal conclusions to which no response is required. To the extent
20 a response is required, Flo denies the allegations contained in Paragraph 80.

21 81. Denied.

22 82. Denied.

23 83. Paragraph 83 states a legal conclusion to which no response is required. To the extent
24 a response is required, Flo denies the allegations in Paragraph 83.

25 84. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
26 allegations in Paragraph 84.

27 85. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
28 allegations in Paragraph 85.

1 86. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
2 allegations in Paragraph 86.

3 87. Paragraph 87 states legal conclusions to which no response is required. To the extent
4 a response is required, Flo denies the allegations contained in Paragraph 87.

5 88. Denied.

6 89. Denied.

7 90. Paragraph 90 states a legal conclusion to which no response is required. To the extent
8 a response is required, Flo denies the allegations in Paragraph 90.

9 91. Admitted.

10 92. Denied.

11 93. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
12 allegations in Paragraph 93, including footnote 10 thereto.

13 94. Flo states that it formerly incorporated a Fabric SDK into the Flo App. Flo lacks
14 knowledge and information sufficient to form a belief as to the truth of the remaining allegations in
15 Paragraph 94, including footnote 11 thereto.

16 95. Denied.

17 96. Flo states that it formerly incorporated a Google Analytics SDK into the Flo App.
18 Flo lacks knowledge and information sufficient to form a belief as to the truth of the remaining
19 allegations in Paragraph 96.

20 97. Denied.

21 98. Paragraph 98 states a legal conclusion to which no response is required. Furthermore,
22 the document cited in Paragraph 98 and footnote 12 thereto speaks for itself. To the extent a response
23 is required, Flo denies the allegations in Paragraph 98.

24 99. Denied.

25 100. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
26 allegations in Paragraph 100, including footnote 13 thereto.

1 101. Flo states that it formerly incorporated a Facebook SDK into the Flo App. Flo lacks
2 knowledge and information sufficient to form a belief as to the truth of the remaining allegations in
3 Paragraph 101.

4 102. The document quoted in Paragraph 102 speaks for itself and no response is required.
5 To the extent a response is required, Flo denies the allegations in Paragraph 102, including footnote
6 14 thereto.

7 103. Denied.

8 104. Denied.

9 105. Denied.

10 106. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
11 allegations in Paragraph 106, including footnote 15 thereto.

12 107. Flo states that it incorporated an AppsFlyer SDK into the Flo App. Flo lacks
13 knowledge and information sufficient to form a belief as to the truth of the remaining allegations in
14 Paragraph 107.

15 108. Denied.

16 109. Denied.

17 110. Denied.

18 111. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
19 allegations in Paragraph 111, including footnote 16 thereto.

20 112. Flo states that it formerly incorporated a Flurry SDK into the Flo App. Flo lacks
21 knowledge and information sufficient to form a belief as to the truth of the remaining allegations in
22 Paragraph 112.

23 113. The document cited in Paragraph 113 speaks for itself. To the extent a response is
24 required, Flo denies the allegations contained in Paragraph 113.

25 114. Denied.

26 **FACTUAL BACKGROUND**

27 115. Admitted.

28 116. Admitted.

1 117. Paragraph 117 contains legal conclusions to which no response is required. To the
2 extent a response is required, Flo states that the Flo App allows users to answer various optional
3 survey questions regarding, among other things, contraception, vaginal discharge, diseases, water
4 intake, bodyweight, pain, mood, and sexual activity. Flo further states that the Flo App's survey
5 questions have changed over time. Users can write "personal notes" in the Flo App. The Flo App
6 uses push notifications to improve the user experience. Flo denies all other allegations in Paragraph
7 117.

8 118. Flo states that in 2017 the Flo App included a community section for users to
9 anonymously ask and answer questions related to women's health. Flo otherwise denies the
10 allegations in Paragraph 118.

11 119. Admitted.

12 120. Flo's website speaks for itself, and therefore no response is required. To the extent a
13 response is required, Flo states that the Flo App was developed and is operated in consultation with
14 an international "medical board," as described on Flo's website. Flo otherwise denies the allegations
15 in Paragraph 120.

16 121. Admitted.

17 122. Paragraph 122 contains legal conclusions to which no response is required. To the
18 extent a response is required, Flo states that more than 100 million users worldwide have
19 downloaded the Flo App. Flo further states that not everyone who downloads the Flo App enters
20 personal information into it. Flo otherwise denies the allegations in Paragraph 122.

21 123. Paragraph 123 states legal conclusions to which no response is required.
22 Furthermore, the documents quoted in Paragraph 123 speak for themselves. To the extent a response
23 is required, Flo states that it disclosed it would share certain information with third parties, including
24 the Analytics Defendants, to, among other things, operate, analyze, and improve the App. Flo
25 otherwise denies the allegations in Paragraph 123.

26 124. The article referenced in Paragraph 124 and footnote 18 thereto speaks for itself. To
27 the extent a response is required, Flo denies the allegations contained in Paragraph 124.

28 125. Denied.

1 126. Denied.

2 127. Denied.

3 128. Denied.

4 129. Denied.

5 130. Denied.

6 131. Paragraph 131 references written survey questions that speak for themselves. To the
7 extent a response is required, Flo otherwise denies the allegations contained in Paragraph 131.

8 132. Paragraph 132 references written survey questions that speak for themselves and
9 therefore no response is required. To the extent a response is required, Flo otherwise denies the
10 allegations contained in Paragraph 132.

11 133. Paragraph 133 contains legal conclusions to which no response is required. In
12 addition, Paragraph 133 references written survey questions that speak for themselves. To the extent
13 a response is required, Flo denies the allegations contained in Paragraph 133.

14 134. The Complaint fails to identify when and where Flo allegedly made the statement
15 referred to in the Paragraph 134. To the extent it exists, the purported statement speaks for itself.
16 Flo otherwise denies the allegations in Paragraph 134.

17 135. Paragraph 135 contains legal conclusions to which no response is required. To the
18 extent a response is required, Flo denies the allegations contained in Paragraph 135.

19 136. Denied.

20 137. Flo states that it disclosed de-identified Standard and Custom App Events to third
21 parties, consistent with its Privacy Policy. Flo further states that Standard App Events generally
22 record routine app functions and that Custom App Events generally track certain in-app navigation
23 (but not the users' actual inputs). Flo otherwise denies the allegations contained in Paragraph 137.

24 138. Denied.

25 139. Denied.

26 140. Flo states that it integrated third-party SDKs into the Flo App from 2016 onward,
27 including SDKs from the Analytics Defendants until early 2019. Flo otherwise denies the allegations
28 contained in Paragraph 140.

1 141. Denied.

2 142. Denied.

3 143. Denied.

4 144. Flo lacks knowledge and information sufficient to form a belief as to the truth of
5 Plaintiffs' purported analysis reference in Paragraph 144. Flo also otherwise denies the allegations
6 contained in Paragraph 144.

7 145. Flo lacks knowledge and information sufficient to form a belief as to the truth of
8 Plaintiffs' purported analysis reference in Paragraph 145. Flo also otherwise denies the allegations
9 contained in Paragraph 145.

10 146. Flo lacks knowledge and information sufficient to form a belief as to the truth of
11 Plaintiffs' purported analysis reference in Paragraph 146. Flo also otherwise denies the allegations
12 contained in Paragraph 146.

13 147. Denied.

14 148. Paragraph 148 states legal conclusions to which no response is required. In addition,
15 the FTC complaint referenced in Paragraph 148 speaks for itself, and therefore no response is
16 required. To the extent a response is required, Flo denies the allegations contained in Paragraph 148,
17 including footnote 21 thereto.

18 149. Denied.

19 150. Flo states that it stopped using the Fabric, Facebook, Flurry, and Google SDKs in the
20 Flo App, starting with the App versions released in 2019. Flo otherwise denies the allegations
21 contained in Paragraph 150.

22 151. Denied.

23 152. Flo states that persistent identifiers are unique to each device. Flo otherwise denies
24 the allegations contained in Paragraph 152.

25 153. Flo states that IDFAs and IDVAs are de-identified device identifiers. Flo otherwise
26 denies the allegations in Paragraph 153.

27 154. Flo states that AADs and Android IDs are de-identified device identifiers. Flo
28 otherwise denies the allegations in Paragraph 153.

1 155. Flo states that persistent identifiers can sometimes contain information about a
2 mobile device's software or hardware. Flo otherwise denies all allegations contained in Paragraph
3 155.

4 156. The document referenced in Paragraph 156, including footnote 23 thereto, speaks for
5 itself, and therefore no response is required. To the extent a response is required, Flo denies the
6 allegations in Paragraph 156.

7 157. The document referenced in Paragraph 157, including footnote 24 thereto, speaks for
8 itself, and therefore no response is required. To the extent a response is required, Flo denies the
9 allegations in Paragraph 157.

10 158. Denied.

11 159. Denied.

12 160. Denied.

13 161. Paragraph 161 contains legal conclusions to which no response is required.
14 Furthermore, any purported statements by Flo speak for themselves. To the extent a response is
15 required, Flo refers Plaintiffs to its Terms of Use and Privacy Policy, which speak for themselves,
16 and contain Flo's representations regarding user data. Flo otherwise denies the allegations contained
17 in Paragraph 161.

18 162. Paragraph 162 contains legal conclusions to which no response is required. To the
19 extent a response is required, Flo denies the allegations in Paragraph 162.

20 163. Flo's Privacy Policy speaks for itself, and therefore no response is required. To the
21 extent a response is required, Flo otherwise denies the allegations in Paragraph 163, including
22 footnote 25.

23 164. Flo's Privacy Policy speaks for itself, and therefore no response is required. To the
24 extent a response is required, Flo denies the allegations in Paragraph 164, including footnote 26.

25 165. Flo's Privacy Policy speaks for itself, and therefore no response is required. To the
26 extent a response is required, Flo denies the allegations in Paragraph 165, including footnote 27.

27 166. Flo's Privacy Policy speaks for itself, and therefore no response is required. To the
28 extent a response is required, Flo denies the allegations in Paragraph 166, including footnote 28.

1 167. Flo's Privacy Policy speaks for itself, and therefore no response is required. To the
2 extent a response is required, Flo denies the allegations in Paragraph 167, including footnote 29.

3 168. Paragraph 168 contains legal conclusions to which no response is required.
4 Furthermore, the notification referenced in Paragraph 168 speaks for itself. To the extent a response
5 is required, Flo denies the allegations contained in Paragraph 168.

6 169. Denied.

7 170. Denied.

8 171. Denied.

9 172. The notification referenced in Paragraph 172 speaks for itself and, therefore, no
10 response is required. To the extent a response is required, Flo denies the allegations in Paragraph
11 172.

12 173. The notification referenced in Paragraph 173 speaks for itself and, therefore, no
13 response is required. To the extent a response is required, Flo denies the allegations in Paragraph
14 173.

15 174. Paragraph 174 contains legal conclusions to which no response is required. In
16 addition, the notification referenced in Paragraph 174 speaks for itself and, therefore, no response
17 is required. To the extent a response is required, Flo denies the allegations in Paragraph 174.

18 175. Denied.

19 176. Paragraph 176 contains legal conclusions to which no response is required. In
20 addition, the notification referenced in Paragraph 176 speaks for itself and, therefore, no response
21 is required. To the extent a response is required, Flo denies the allegations in Paragraph 176.

22 177. Flo's Privacy Policy speaks for itself, and therefore no response is required.
23 Paragraph 177 also contains legal conclusions to which no response is required. To the extent a
24 response is required, Flo denies the allegations in Paragraph 177, including footnote 30.

25 178. Flo's Privacy Policy speaks for itself, and therefore no response is required. To the
26 extent a response is required, Flo denies the allegations in Paragraph 178.

27 179. Denied.

28 180. Denied.

1 181. Denied.

2 182. Denied.

3 183. Denied.

4 184. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
5 allegations in Paragraph 184.

6 185. The *Wall Street Journal* article referenced in Paragraph 185 speaks for itself, and
7 therefore no response is required. To the extent a response is required, Flo lacks knowledge and
8 information sufficient to form a belief as to the truth of the allegations in Paragraph 185, including
9 footnote 34 thereto.

10 186. Admitted.

11 187. Denied.

12 188. Paragraph 188 contains legal conclusions to which no response is required.
13 Paragraph 188 also references purported “studies” that speak for themselves. To the extent a
14 response is required, Flo denies the allegations contained in Paragraph 188.

15 189. Paragraph 189 contains legal conclusions to which no response is required.
16 Paragraph 189 also references “polls” and “studies” that speak for themselves. To the extent a
17 response is required, Flo denies the allegations contained in Paragraph 189.

18 190. The “studies” referenced in Paragraph 190 speak for themselves, and therefore no
19 response is required. To the extent a response is required, Flo denies the allegations in Paragraph
20 190, including footnotes 35 and 36 thereto.

21 191. The article referenced in Paragraph 191, including footnote 37 thereto, speaks for
22 itself, and therefore no response is required. To the extent a response is required, Flo lacks
23 knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph
24 191.

25 192. The article referenced in Paragraph 192, including footnote 38 thereto, speaks for
26 itself, and therefore no response is required. To the extent a response is required, Flo denies the
27 allegations in Paragraph 192.

28

1 193. The article referenced in Paragraph 193, including footnote 39 thereto, speaks for
2 itself, and therefore no response is required. To the extent a response is required, Flo denies the
3 allegations in Paragraph 193.

4 194. The article referenced in Paragraph 194, including footnote 40 thereto, speaks for
5 itself, and therefore no response is required. To the extent a response is required, Flo denies the
6 allegations in Paragraph 194.

7 195. The article referenced in Paragraph 195, including footnotes 41 and 42 thereto,
8 speaks for itself, and therefore no response is required. To the extent a response is required, Flo
9 denies the allegations in Paragraph 195.

10 196. The article referenced in Paragraph 196, including footnote 43 thereto, speaks for
11 itself, and therefore no response is required. To the extent a response is required, Flo denies the
12 allegations in Paragraph 196.

13 197. The article referenced in Paragraph 197, including footnotes 44 and 45 thereto,
14 speaks for itself, and therefore no response is required. To the extent a response is required, Flo
15 denies the allegations in Paragraph 197.

16 198. Paragraph 198 contains legal conclusions to which no response is required. To the
17 extent a response is required, Flo denies the allegations contained in Paragraph 198.

18 199. Denied.

19 200. Denied.

20 201. The article referenced in Paragraph 201, including footnotes 47 and 48 thereto,
21 speaks for itself, and therefore no response is required. To the extent a response is required, Flo
22 lacks knowledge and information sufficient to form a belief as to the truth of the allegations in
23 Paragraph 201.

24 202. Paragraph 202 contains legal conclusions to which no response is required. To the
25 extent a response is required, Flo denies the allegations contained in Paragraph 202 insofar as they
26 pertain to Flo.

1 203. The article referenced in Paragraph 203, including footnotes 49 and 50 thereto,
2 speaks for itself, and therefore no response is required. To the extent a response is required, denies
3 the allegations in Paragraph 203.

4 204. The article referenced in Paragraph 204, including footnotes 51, 52, and 53 thereto,
5 speaks for itself, and therefore no response is required. To the extent a response is required, Flo
6 lacks knowledge and information sufficient to form a belief as to the truth of the allegations in
7 Paragraph 204.

8 205. The article referenced in Paragraph 205, including footnote 54 thereto, speaks for
9 itself, and therefore no response is required. To the extent a response is required, Flo lacks
10 knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph
11 205.

12 206. The “paper” referenced in Paragraph 206, including footnotes 55. 56. And 57 thereto,
13 speaks for itself, and therefore no response is required. To the extent a response is required, Flo
14 lacks knowledge and information sufficient to form a belief as to the truth of the allegations in
15 Paragraph 206.

16 207. The “paper” referenced in Paragraph 207, including footnote 58 thereto, speaks for
17 itself, and therefore no response is required. To the extent a response is required, Flo lacks
18 knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph
19 207.

20 208. The article referenced in Paragraph 208, including footnotes 59 and 60 thereto,
21 speaks for itself, and therefore no response is required. To the extent a response is required, Flo
22 lacks knowledge and information sufficient to form a belief as to the truth of the allegations in
23 Paragraph 208.

24 209. The article referenced in Paragraph 209, including footnote 61 thereto, speaks for
25 itself, and therefore no response is required. To the extent a response is required, Flo lacks
26 knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph
27 209.

1 210. The article referenced in Paragraph 210, including footnote 62 thereto, speaks for
2 itself, and therefore no response is required. To the extent a response is required, Flo lacks
3 knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph
4 210.

5 211. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
6 remaining allegations in Paragraph 211 as they pertain to the Analytics Defendants or non-parties.
7 Flo denies the allegations in Paragraph 211 insofar as they pertain to Flo.

8 212. The article referenced in Paragraph 212, including footnote 63 and 64 thereto, speaks
9 for itself, and therefore no response is required. To the extent a response is required, Flo lacks
10 knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph
11 212.

12 213. The articles referenced in Paragraph 213, including footnotes 65, 66, 67, and 68
13 thereto, speak for themselves, and therefore no response is required. To the extent a response is
14 required, Flo lacks knowledge and information sufficient to form a belief as to the truth of the
15 allegations in Paragraph 213.

16 214. The article referenced in Paragraph 214, including footnote 69 thereto, speaks for
17 itself, and therefore no response is required. To the extent a response is required, Flo lacks
18 knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph
19 214.

20 215. Denied.

21 216. Denied.

22 217. Flo states that the FTC conducted an investigation into Flo's privacy practices, which
23 it subsequently settled with no admission of wrongdoing. Flo lacks knowledge and information
24 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 217.

25 218. The FTC Complaint referenced in Paragraph 218 speaks for itself. To the extent a
26 response is required, Flo denies the allegations contained in Paragraph 218.

27 219. Denied.

28 220. Denied.

1 221. The Settlement referenced in Paragraph 221 speaks for itself, and therefore no
2 response is required. To the extent a response is required, Flo states that it entered into a Settlement
3 Agreement with the FTC. Flo otherwise denies the allegations contained in Paragraph 221.

4 222. Paragraph 222 states a legal conclusion to which no response is required.
5 Furthermore, the terms of the Settlement referenced in Paragraph 222 speak for themselves, and
6 therefore no response is required. To the extent a response is required, Flo denies the allegations in
7 Paragraph 222.

8 223. Paragraph 223 states a legal conclusion to which no response is required.
9 Furthermore, the terms of the Settlement referenced in Paragraph 223 speak for themselves, and
10 therefore no response is required. To the extent a response is required, Flo denies the
11 characterization of the Settlement contained in Paragraph 223.

12 224. The statement referenced in Paragraph 224, and footnote 70 thereto, speaks for itself,
13 and therefore no response is required. To the extent a response is required, Flo denies the allegations
14 contained in Paragraph 224, including footnote 70 thereto.

15 225. The statement referenced in Paragraph 225, and footnote 71 thereto, speaks for itself,
16 and therefore no response is required. To the extent a response is required, Flo denies the allegations
17 contained in Paragraph 225, including footnote 70 thereto.

18 226. Admitted.

19 227. The terms of the Settlement and any comments thereto speak for themselves, and
20 therefore no response is required. To the extent a response is required, Flo denies the allegations
21 contained in Paragraph 227, including footnote 72 thereto.

22 228. The terms of the Settlement and any comments thereto speak for themselves, and
23 therefore no response is required. Furthermore, Flo lacks knowledge and information sufficient to
24 form a belief as to the truth of the allegations in Paragraph 229 as they pertain to thoughts,
25 statements, or actions of non-parties. To the extent a response is required, Flo denies the allegations
26 contained in Paragraph 228, including footnotes 73 and 74.

27 229. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
28 allegations in Paragraph 229 as they pertain to thoughts, statements, or actions of non-parties. In

1 addition, the terms of the Settlement and any comments thereto speak for themselves, and therefore
2 no response is required. To the extent a response is required, Flo denies the allegations contained in
3 Paragraph 229, including footnote 75.

4 230. Paragraph 230 states legal conclusions to which no response is required.
5 Furthermore, the terms of the Settlement referenced in Paragraph 230 speak for themselves, and
6 therefore no response is required. To the extent a response is required, Flo states that four members
7 of the FTC voted to approve the Settlement with Flo on June 22, 2021, with one member not voting.
8 Flo otherwise denies the allegations contained in Paragraph 230.

9 231. Paragraph 231 states a legal conclusion to which no response is required.
10 Furthermore, the terms of the Settlement referenced in Paragraph 231 speak for themselves, and
11 therefore no response is required, Flo otherwise denies the allegations contained in Paragraph 231.

12 232. The notice cited in Paragraph 232 speaks for itself, and therefore no response is
13 required. To the extent a response is required, Flo otherwise denies the allegations contained in
14 Paragraph 232.

15 233. Flo lacks knowledge and information sufficient to form a belief as to the truth of the
16 allegations in Paragraph 233.

17 234. The report referenced in Paragraph 234 speaks for itself and therefore no response is
18 required. To the extent a response is required, Flo denies the allegations contained in Paragraph 234.

19 235. The report referenced in Paragraph 235 speaks for itself and therefore no response is
20 required. To the extent a response is required, Flo denies the allegations contained in Paragraph 235.

21 236. The report referenced in Paragraph 236 speaks for itself and therefore no response is
22 required. To the extent a response is required, Flo lacks knowledge and information sufficient to
23 form a belief as to the truth of the allegations in Paragraph 236 as they pertain to the Facebook's
24 cooperation with the NYSDFS investigation. Flo otherwise denies the allegations contained in
25 Paragraph 236.

26 237. Denied.

27 238. The report referenced in Paragraph 238 speaks for itself, and therefore no response
28 is required. To the extent a response is required, Flo denies the allegations in Paragraph 238.

239. The report referenced in Paragraph 239 speaks for itself and therefore no response is required. To the extent a response is required, Flo lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 239 as they pertain to the Facebook's review or audit procedures. Flo otherwise denies the allegations in Paragraph 239.

240. The report referenced in Paragraph 240 speaks for itself, and therefore no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 240.

TOLLING, CONCEALMENT, ESTOPPEL, AND DELAYED DISCOVERY

241. Denied.

242. Denied.

243. Denied.

244. Denied.

CLASS ACTION ALLEGATIONS

245. Paragraph 245 states a legal conclusion to which no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 245 and denies that class certification is appropriate in this case.

246. Paragraph 246 states a legal conclusion to which no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 246 and denies that class certification is appropriate in this case.

247. Denied.

248. Denied.

249. Denied.

250. Denied.

251. Denied.

252. Paragraph 252 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 252 and do not consent to Plaintiffs' right to unilaterally amend their proposed class definition.

CALIFORNIA LAW APPLIES TO THE ENTIRE CLASS

253. Paragraph 253 contains legal conclusions to which no response is required. To the extent a response is required, Flo states that its Terms of Use speak for themselves and otherwise denies the allegations in Paragraph 253.

254. Paragraph 254 contains legal conclusions to which no response is required. To the extent a response is required, Flo states that its Terms of Use speak for themselves and otherwise denies the allegations in Paragraph 254.

255. Paragraph 255 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 255.

256. Paragraph 256 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations contained in Paragraph 256.

257. Paragraph 257 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations contained in Paragraph 257.

258. Paragraph 258 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations contained in Paragraph 258.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**Violation Common Law Invasion of Privacy – Intrusion Upon Seclusion
Against Flo Health (On Behalf of Plaintiffs and the Class and Subclass)**

259. Flo incorporates by reference its responses to Paragraphs 1 through 258, above.

260. Paragraph 260 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 260.

261. Denied.

262. Denied.

263. Denied.

264. Denied.

265. Denied.

266. Denied.

267. Denied.

268. The FTC Complaint referenced in Paragraph 268 speaks for itself, and therefore no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 268.

269. The Wall Street Journal article referenced in Paragraph 269, including footnote 80, speaks for itself, and therefore no response is required. To the extent a response is required, Flo lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 269, including footnote 80 thereto.

270. Denied.

271. Denied.

272. Denied.

273. Denied.

274. Paragraph 274 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations contained in Paragraph 274.

SECOND CLAIM FOR RELIEF

Invasion of Privacy and Violation of the California Constitution, Art. 1, § 1 Against Flo Health (On Behalf of Plaintiffs and the Class and Subclass)

275. Flo incorporates by reference its responses to Paragraphs 1 through 274, above.

276. Paragraph 276 contains legal conclusions to which no response is required. Paragraph 276 also quotes the California Constitution, which speaks for itself.

277. Paragraph 277 states a legal conclusion to which no response is required.

278. Paragraph 278 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 278.

279. Paragraph 279 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 279.

280. Denied.

281. Denied.

282. Denied.

283. Denied.

284. Denied.

285. Denied.

286. Denied.

287. Paragraph 287 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations contained in Paragraph 287.

THIRD CLAIM FOR RELIEF

Breach of Contract against Flo Health (On Behalf of Plaintiffs and the Class and Subclass)

288. Flo incorporates by reference its responses to Paragraphs 1 through 287, above.

289. Denied.

290. Flo's Terms of Use and Privacy Policy speak for themselves, and therefore no response is required. Paragraph 290 also contains legal conclusions to which no response is required. To the extent a response is required, Flo otherwise denies the allegations in Paragraph 290.

291. Denied.

292. Paragraph 292 contains legal conclusions to which no response is required. Furthermore, Flo's Privacy Policy speaks for itself, and therefore no response is required. To the extent a response is required, Flo denies the allegations contained in Paragraph 292.

293. Paragraph 293 states a legal conclusion to which no response is required. Furthermore, Flo's Privacy Policy speaks for itself, and therefore no response is required. To the extent a response is required, Flo denies the allegations contained in Paragraph 293.

294. Paragraph 294 states a legal conclusion to which no response is required. Furthermore, Flo's Privacy Policy speaks for itself, and therefore no response is required. To the extent a response is required, Flo denies the allegations contained in Paragraph 294.

295. Denied.

296. Denied.

297. Denied.

FOURTH CLAIM FOR RELIEF

Breach of Implied Contract

**Against Flo Health (On Behalf of Plaintiffs and the Class and the Subclass)
(In the Alternative)**

298. Flo incorporates by reference its responses to Paragraphs 1 through 297, above.

299. Paragraph 299 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations in Paragraph 299.

300. Denied.

301. Denied.

302. Flo's Privacy Policy speaks for itself, and therefore no response is required. Paragraph 302 also contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations contained in Paragraph 302.

303. Paragraph 303 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations contained in Paragraph 303.

304. Paragraph 304 contains legal conclusions to which no response is required. To the extent a response is required, Flo lacks knowledge and information sufficient to form a belief as to Plaintiffs' or putative class members' states of mind. Flo otherwise denies the allegations in Paragraph 304.

305. Paragraph 305 contains legal conclusions to which no response is required. To the extent a response is required, Flo lacks knowledge and information sufficient to form a belief as to Plaintiffs' or putative class members' states of mind. Flo otherwise denies the allegations in Paragraph 305.

306. Paragraph 306 states legal conclusions to which no response is required. Furthermore, Flo's Privacy Policy and Terms of Use speak for themselves and therefore no response is required. To the extent a response is required, Flo denies the allegations contained in Paragraph 306.

307. Flo lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 307.

308. Denied.

309. Denied.

1 310. Denied.

2 311. Denied.

3 **FIFTH CLAIM FOR RELIEF**

4 **Unjust Enrichment Against Flo Health, Facebook, Google, and Flurry**
5 **(On Behalf of Plaintiffs and the Class and Subclass)**
6 **(In the Alternative as to Flo Health)**

7 312. Flo incorporates by reference its responses to Paragraphs 1 through 311, above.

8 313. Paragraph 313 contains legal conclusions to which no response is required. To the
9 extent a response is required, Flo denies the allegations contained in Paragraph 313.

10 314. Denied.

11 315. Denied.

12 316. Denied.

13 317. Denied.

14 318. Denied.

15 319. Denied.

16 **SIXTH CLAIM FOR RELIEF**

17 **Stored Communications Act (“SCA”) Against Flo Health 18 U.S.C. §§ 2702, *et seq.***
18 **(On Behalf of Plaintiffs and the Class and Subclass)**

19 320. Flo incorporates by reference its responses to Paragraphs 1 through 319, above.

20 321. In accordance with the Court’s June 6, 2022 Order re Motions to Dismiss (ECF No.
21 158), Flo is not required to respond to allegations in this Paragraph regarding Plaintiffs’ Stored
22 Communications Act claim because that claim has been dismissed. To the extent this Paragraph
23 contains allegations requiring a response, Flo denies them.

24 322. In accordance with the Court’s June 6, 2022 Order re Motions to Dismiss (ECF No.
25 158), Flo is not required to respond to allegations in this Paragraph regarding Plaintiffs’ Stored
26 Communications Act claim because that claim has been dismissed. To the extent this Paragraph
27 contains allegations requiring a response, Flo denies them.

28 323. In accordance with the Court’s June 6, 2022 Order re Motions to Dismiss (ECF No.
158), Flo is not required to respond to allegations in this Paragraph regarding Plaintiffs’ Stored

1 Communications Act claim because that claim has been dismissed. To the extent this Paragraph
2 contains allegations requiring a response, Flo denies them.

3 324. In accordance with the Court's June 6, 2022 Order re Motions to Dismiss (ECF No.
4 158), Flo is not required to respond to allegations in this Paragraph regarding Plaintiffs' Stored
5 Communications Act claim because that claim has been dismissed. To the extent this Paragraph
6 contains allegations requiring a response, Flo denies them.

7 325. In accordance with the Court's June 6, 2022 Order re Motions to Dismiss (ECF No.
8 158), Flo is not required to respond to allegations in this Paragraph regarding Plaintiffs' Stored
9 Communications Act claim because that claim has been dismissed. To the extent this Paragraph
10 contains allegations requiring a response, Flo denies them.

11 326. In accordance with the Court's June 6, 2022 Order re Motions to Dismiss (ECF No.
12 158), Flo is not required to respond to allegations in this Paragraph regarding Plaintiffs' Stored
13 Communications Act claim because that claim has been dismissed. To the extent this Paragraph
14 contains allegations requiring a response, Flo denies them.

15 327. In accordance with the Court's June 6, 2022 Order re Motions to Dismiss (ECF No.
16 158), Flo is not required to respond to allegations in this Paragraph regarding Plaintiffs' Stored
17 Communications Act claim because that claim has been dismissed. To the extent this Paragraph
18 contains allegations requiring a response, Flo denies them.

19 328. In accordance with the Court's June 6, 2022 Order re Motions to Dismiss (ECF No.
20 158), Flo is not required to respond to allegations in this Paragraph regarding Plaintiffs' Stored
21 Communications Act claim because that claim has been dismissed. To the extent this Paragraph
22 contains allegations requiring a response, Flo denies them.

23 329. In accordance with the Court's June 6, 2022 Order re Motions to Dismiss (ECF No.
24 158), Flo is not required to respond to allegations in this Paragraph regarding Plaintiffs' Stored
25 Communications Act claim because that claim has been dismissed. To the extent this Paragraph
26 contains allegations requiring a response, Flo denies them.

27 330. In accordance with the Court's June 6, 2022 Order re Motions to Dismiss (ECF No.
28 158), Flo is not required to respond to allegations in this Paragraph regarding Plaintiffs' Stored

1 Communications Act claim because that claim has been dismissed. To the extent this Paragraph
2 contains allegations requiring a response, Flo denies them.

3 331. In accordance with the Court's June 6, 2022 Order re Motions to Dismiss (ECF No.
4 158), Flo is not required to respond to allegations in this Paragraph regarding Plaintiffs' Stored
5 Communications Act claim because that claim has been dismissed. To the extent this Paragraph
6 contains allegations requiring a response, Flo denies them.

7 332. In accordance with the Court's June 6, 2022 Order re Motions to Dismiss (ECF No.
8 158), Flo is not required to respond to allegations in this Paragraph regarding Plaintiffs' Stored
9 Communications Act claim because that claim has been dismissed. To the extent this Paragraph
10 contains allegations requiring a response, Flo denies them.

11 333. In accordance with the Court's June 6, 2022 Order re Motions to Dismiss (ECF No.
12 158), Flo is not required to respond to allegations in this Paragraph regarding Plaintiffs' Stored
13 Communications Act claim because that claim has been dismissed. To the extent this Paragraph
14 contains allegations requiring a response, Flo denies them.

15 334. In accordance with the Court's June 6, 2022 Order re Motions to Dismiss (ECF No.
16 158), Flo is not required to respond to allegations in this Paragraph regarding Plaintiffs' Stored
17 Communications Act claim because that claim has been dismissed. To the extent this Paragraph
18 contains allegations requiring a response, Flo denies them.

19 **SEVENTH CLAIM FOR RELIEF**

20 **Violation of California Confidentiality of Medical Information Act Against Flo Health Civil
Code Section 56 *et seq.* ("CMIA")**

21 **(On Behalf of Plaintiffs and the Class and Subclass)**

22 335. Flo incorporates by reference its responses to Paragraphs 1 through 334, above.

23 336. Denied.

24 337. Denied.

25 338. Paragraph 338 contains legal conclusions to which no response is required. To the
26 extent a response is required, Flo denies all other allegations contained in Paragraph 338.

27 339. Denied.

28 340. Denied.

1 341. Denied.

2 342. Denied.

3 343. Denied.

4 344. Denied.

5 345. Denied.

6 346. Denied.

7 347. Paragraph 347 contains legal conclusions to which no response is required. In
8 addition, the statute quoted in Paragraph 347 speaks for itself. To the extent a response is required,
9 Flo otherwise denies the allegations contained in Paragraph 347.

10 348. Denied.

11 349. Denied.

12 350. Paragraph 350 contains legal conclusions to which no response is required. In
13 addition, the statute quoted in Paragraph 350 speaks for itself. To the extent a response is required,
14 Flo denies the allegations contained in Paragraph 350.

15 351. Denied.

16 352. Denied.

17 353. Denied.

18 **EIGHTH CLAIM FOR RELIEF**
19 **Violations of Cal. Bus. & Prof. Code §§ 17200 *et. seq.* Against Flo Health**
20 **(On Behalf of Plaintiffs and the Class and Subclass)**

20 354. Flo incorporates by reference its responses to Paragraphs 1 through 353, above.

21 355. Denied.

22 356. Denied.

23 357. Denied.

24 358. Denied.

25 359. Denied.

26 360. Denied.

27 361. Denied.

28

362. Denied.

363. Paragraph 363 contains legal conclusions to which no response is required. The document cited in Paragraph 363 and footnote 88 thereto speaks for itself. To the extent a response is required, Flo denies the allegations contained in Paragraph 363.

364. Denied.

365. Paragraph 365 contains legal conclusions to which no response is required. To the extent a response is required, Flo denies the allegations contained in Paragraph 365.

NINTH CLAIM FOR RELIEF

**Violations of Cal. Bus. & Prof. Code §§ 17200 *et. seq.* Against Facebook, Google, and Flurry
(On Behalf of Plaintiffs and the Class and Subclass)**

366. Count 9 is not asserted against Flo, and therefore no response is required to Paragraphs 366 through 376. To the extent a response is required, Flo denies the allegations contained in Paragraphs 366 through 376.

367. Count 9 is not asserted against Flo, and therefore no response is required to Paragraphs 366 through 376. To the extent a response is required, Flo denies the allegations contained in Paragraphs 366 through 376.

368. Count 9 is not asserted against Flo, and therefore no response is required to Paragraphs 366 through 376. To the extent a response is required, Flo denies the allegations contained in Paragraphs 366 through 376.

369. Count 9 is not asserted against Flo, and therefore no response is required to Paragraphs 366 through 376. To the extent a response is required, Flo denies the allegations contained in Paragraphs 366 through 376.

370. Count 9 is not asserted against Flo, and therefore no response is required to Paragraphs 366 through 376. To the extent a response is required, Flo denies the allegations contained in Paragraphs 366 through 376.

371. Count 9 is not asserted against Flo, and therefore no response is required to Paragraphs 366 through 376. To the extent a response is required, Flo denies the allegations contained in Paragraphs 366 through 376.

372. Count 9 is not asserted against Flo, and therefore no response is required to Paragraphs 366 through 376. To the extent a response is required, Flo denies the allegations contained in Paragraphs 366 through 376.

373. Count 9 is not asserted against Flo, and therefore no response is required to Paragraphs 366 through 376. To the extent a response is required, Flo denies the allegations contained in Paragraphs 366 through 376.

374. Count 9 is not asserted against Flo, and therefore no response is required to Paragraphs 366 through 376. To the extent a response is required, Flo denies the allegations contained in Paragraphs 366 through 376.

375. Count 9 is not asserted against Flo, and therefore no response is required to Paragraphs 366 through 376. To the extent a response is required, Flo denies the allegations contained in Paragraphs 366 through 376.

376. Count 9 is not asserted against Flo, and therefore no response is required to Paragraphs 366 through 376. To the extent a response is required, Flo denies the allegations contained in Paragraphs 366 through 376.

TENTH CLAIM FOR RELIEF

Aiding and Abetting Violations of Cal. Bus. & Prof. Code §§ 17200 *et. seq.* Against the Non-Flo Defendants (On Behalf of Plaintiffs and the Class and Subclass)

377. Count 10 is not asserted against Flo, and therefore no response is required to Paragraphs 377 through 383. To the extent a response is required, Flo denies the allegations contained in Paragraphs 377 through 383.

378. Count 10 is not asserted against Flo, and therefore no response is required to Paragraphs 377 through 383. To the extent a response is required, Flo denies the allegations contained in Paragraphs 377 through 383.

379. Count 10 is not asserted against Flo, and therefore no response is required to Paragraphs 377 through 383. To the extent a response is required, Flo denies the allegations contained in Paragraphs 377 through 383.

380. Count 10 is not asserted against Flo, and therefore no response is required to Paragraphs 377 through 383. To the extent a response is required, Flo denies the allegations contained in Paragraphs 377 through 383.

381. Count 10 is not asserted against Flo, and therefore no response is required to Paragraphs 377 through 383. To the extent a response is required, Flo denies the allegations contained in Paragraphs 377 through 383.

382. Count 10 is not asserted against Flo, and therefore no response is required to Paragraphs 377 through 383. To the extent a response is required, Flo denies the allegations contained in Paragraphs 377 through 383.

383. Count 10 is not asserted against Flo, and therefore no response is required to Paragraphs 377 through 383. To the extent a response is required, Flo denies the allegations contained in Paragraphs 377 through 383.

ELEVENTH CLAIM FOR RELIEF

**Aiding and Abetting Violation Common Law Invasion of Privacy – Intrusion Upon
Seclusion Against the Non-Flo Defendants
(On Behalf of Plaintiffs and the Class and Subclass)**

384. Count 11 is not asserted against Flo, and therefore no response is required to Paragraphs 384 through 391. To the extent a response is required, Flo denies the allegations contained in Paragraphs 384 through 391.

385. Count 11 is not asserted against Flo, and therefore no response is required to Paragraphs 384 through 391. To the extent a response is required, Flo denies the allegations contained in Paragraphs 384 through 391.

386. Count 11 is not asserted against Flo, and therefore no response is required to Paragraphs 384 through 391. To the extent a response is required, Flo denies the allegations contained in Paragraphs 384 through 391.

387. Count 11 is not asserted against Flo, and therefore no response is required to Paragraphs 384 through 391. To the extent a response is required, Flo denies the allegations contained in Paragraphs 384 through 391.

1 396. Count 12 is not asserted against Flo, and therefore no response is required to
2 Paragraphs 392 through 406. To the extent a response is required, Flo denies the allegations
3 contained in Paragraphs 392 through 406.

4 397. Count 12 is not asserted against Flo, and therefore no response is required to
5 Paragraphs 392 through 406. To the extent a response is required, Flo denies the allegations
6 contained in Paragraphs 392 through 406.

7 398. Count 12 is not asserted against Flo, and therefore no response is required to
8 Paragraphs 392 through 406. To the extent a response is required, Flo denies the allegations
9 contained in Paragraphs 392 through 406.

10 399. Count 12 is not asserted against Flo, and therefore no response is required to
11 Paragraphs 392 through 406. To the extent a response is required, Flo denies the allegations
12 contained in Paragraphs 392 through 406.

13 400. Count 12 is not asserted against Flo, and therefore no response is required to
14 Paragraphs 392 through 406. To the extent a response is required, Flo denies the allegations
15 contained in Paragraphs 392 through 406.

16 401. Count 12 is not asserted against Flo, and therefore no response is required to
17 Paragraphs 392 through 406. To the extent a response is required, Flo denies the allegations
18 contained in Paragraphs 392 through 406.

19 402. Count 12 is not asserted against Flo, and therefore no response is required to
20 Paragraphs 392 through 406. To the extent a response is required, Flo denies the allegations
21 contained in Paragraphs 392 through 406.

22 403. Count 12 is not asserted against Flo, and therefore no response is required to
23 Paragraphs 392 through 406. To the extent a response is required, Flo denies the allegations
24 contained in Paragraphs 392 through 406.

25 404. Count 12 is not asserted against Flo, and therefore no response is required to
26 Paragraphs 392 through 406. To the extent a response is required, Flo denies the allegations
27 contained in Paragraphs 392 through 406.
28

405. Count 12 is not asserted against Flo, and therefore no response is required to Paragraphs 392 through 406. To the extent a response is required, Flo denies the allegations contained in Paragraphs 392 through 406.

406. Count 12 is not asserted against Flo, and therefore no response is required to Paragraphs 392 through 406. To the extent a response is required, Flo denies the allegations contained in Paragraphs 392 through 406.

THIRTEENTH CLAIM FOR RELIEF

Violation of the California Invasion of Privacy Act Against Facebook, Google, and Flurry
Cal. Penal Code §§ 630, *et seq.* (“CIPA”)
(On Behalf of Plaintiffs and the Class and Subclass)

407. Count 13 is not asserted against Flo, and therefore no response is required to Paragraphs 407 through 413. To the extent a response is required, Flo denies the allegations contained in Paragraphs 407 through 413.

408. Count 13 is not asserted against Flo, and therefore no response is required to Paragraphs 407 through 413. To the extent a response is required, Flo denies the allegations contained in Paragraphs 407 through 413.

409. Count 13 is not asserted against Flo, and therefore no response is required to Paragraphs 407 through 413. To the extent a response is required, Flo denies the allegations contained in Paragraphs 407 through 413.

410. Count 13 is not asserted against Flo, and therefore no response is required to Paragraphs 407 through 413. To the extent a response is required, Flo denies the allegations contained in Paragraphs 407 through 413.

411. Count 13 is not asserted against Flo, and therefore no response is required to Paragraphs 407 through 413. To the extent a response is required, Flo denies the allegations contained in Paragraphs 407 through 413.

412. Count 13 is not asserted against Flo, and therefore no response is required to Paragraphs 407 through 413. To the extent a response is required, Flo denies the allegations contained in Paragraphs 407 through 413.

1 production not otherwise legally assigned to it as to any element of Plaintiffs' claims, Flo asserts the
2 following separate and additional defenses:

3 **FIRST AFFIRMATIVE DEFENSE**
4 **(Failure to State a Claim)**

5 1. The Complaint, and each purported claim for relief therein, fails to state a claim upon
6 which relief may be granted.

7 **SECOND AFFIRMATIVE DEFENSE**
8 **(Statute of Limitations)**

9 2. Plaintiffs' claims—and each and every member of the putative class's claims—are
10 barred, in whole or in part, by one or more statutes of limitations under applicable law, as well as
11 the contractual limitations period in Flo Health's Terms of Service.

12 **THIRD AFFIRMATIVE DEFENSE**
13 **(Mootness)**

14 3. Plaintiffs' claims—and each and every member of the putative class's claims—are
15 barred, in whole or in part, by the doctrine of mootness.

16 **FOURTH AFFIRMATIVE DEFENSE**
17 **(Privilege/Justification/Excuse)**

18 4. Plaintiffs and the members of the putative class are barred from recovery because
19 Flo's actions were, in whole or in part, privileged, justified and/or excused by operation of law.

20 **FIFTH AFFIRMATIVE DEFENSE**
21 **(Consent)**

22 5. Plaintiffs' claims—and each and every member of the putative class's claims—are
23 barred, in whole or in part, because Plaintiffs and/or putative class members consented to and/or
24 ratified the conduct alleged in the Complaint.

25 **SIXTH AFFIRMATIVE DEFENSE**
26 **(Necessary Incident to Rendition of Services)**

27 6. Plaintiffs' claims—and each and every member of the putative class's claims—are
28 barred, in whole or in part, because Flo's actions were a necessary incident to the rendition of
services.

SEVENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

7. Plaintiffs' claim for damages—and each and every members of the putative class's claims for damages—are barred, in whole or in part, because they would be unjustly enriched if they recovered any monetary relief.

EIGHTH AFFIRMATIVE DEFENSE

(No Standing)

8. Plaintiffs' claims—and each and every member of the putative class's claims—are barred, in whole or in part, because they have not suffered injury in fact because of the acts or practices complained of.

NINTH AFFIRMATIVE DEFENSE

(Contractual Defenses)

9. Plaintiffs' claims—and each and every member of the putative class's claims—are barred, in whole or in part, by contracts and/or agreements they entered into.

TENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

10. Plaintiffs' claims for damages—and each and every member of the putative class's claims for damages—are barred, in whole or in part, to the extent discovery reveals they failed to mitigate the damages they suffered.

ELEVENTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

11. Plaintiffs and the members of the putative class are not entitled to equitable relief because they have an adequate remedy at law and the relief they request is not the proper subject of a judicial remedy.

TWELFTH AFFIRMATIVE DEFENSE

(Actions of Third Parties)

12. Plaintiffs' claims—and each and every member of the putative class's claims—are barred, in whole or in part, because the damages alleged in the Complaint, if any, were caused by persons and entities other than Flo. Such intervening and superseding conduct of others bars and/or diminishes recovery, if any, by Plaintiffs and the putative class members against Flo.

THIRTEENTH AFFIRMATIVE DEFENSE
(Punitive Damages--Unconstitutional)

13. Punitive or exemplary damages should not be awarded or should otherwise be limited because (i) any recovery of punitive or exemplary damages would violate the substantive and procedural safeguards guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, by Article 1, Section 7 of the California Constitution, by section 3294 of the California Civil Code, and by the common law; and (ii) imposition of any punitive or exemplary damages would constitute an excessive fine or penalty under the Eighth Amendment to the United States Constitution and Article 1, Section 17 of the California Constitution.

FOURTEENTH AFFIRMATIVE DEFENSE
(Waiver)

14. Plaintiffs and the members of the putative class are barred from recovery, in whole or in part, by the doctrine of waiver.

FIFTEENTH AFFIRMATIVE DEFENSE
(Estoppel)

15. Plaintiffs and the members of the putative class are barred from recovery, in whole or in part, by the doctrine of estoppel.

SIXTEENTH AFFIRMATIVE DEFENSE
(Laches)

16. Plaintiffs and the members of the putative class are barred from recovery, in whole or in part, by the doctrine of laches.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

17. Plaintiffs and the members of the putative class are barred from recovery, in whole or in part, by the doctrine of unclean hands.

EIGHTEENTH AFFIRMATIVE DEFENSE
(Contractual Defenses—No Damages)

18. Plaintiffs' claims—and each and every member of the putative class's claims—are barred, in whole or in part, because Plaintiffs' damages—including actual, punitive, compensatory, exemplary, or statutory damages—are limited by the terms of contracts between Flo Health and

1 Plaintiffs.

2 **NINETEENTH AFFIRMATIVE DEFENSE**
 3 **(Contractual Defenses—No Liability)**

4 19. Plaintiffs' claims—and each and every member of the putative class's claims—are
 5 barred, in whole or in part, because Flo's liability for the alleged conduct at issue is precluded by
 6 the terms of the contracts between Flo Health and Plaintiffs.

7 **TWENTIETH AFFIRMATIVE DEFENSE**
 8 **(Failure to Plead with Particularity)**

9 Plaintiffs' Consolidated Class Action Complaint fails to plead each purported cause of action
 10 with sufficient particularity.

11 **TWENTY-FIRST AFFIRMATIVE DEFENSE**
 12 **(Release)**

13 Plaintiffs' and the putative class members' claims are barred, in whole or in part, to the extent
 14 they have been released.

15 **TWENTY-SECOND AFFIRMATIVE DEFENSE**
 16 **(Improper Class Action)**

17 Plaintiffs may not maintain this lawsuit as a class action because the purported claims of the
 18 putative class representatives are not sufficiently typical of those of the purported class members,
 19 common issues of fact and law do not predominate over individual issues, liability and damages cannot
 20 be proven on a class-wide basis, the putative class representative will not adequately represent the
 21 purported class, the putative class is not ascertainable, the proposed class action would not be

22 **TWENTY-THIRD AFFIRMATIVE DEFENSE**
 23 **(License)**

24 Meta was licensed, either expressly or impliedly, to use the information that users provided
 25 and that is at issue in Plaintiffs' Consolidated Class Action Complaint.

26 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**
 27 **(Knowledge / Awareness of Alleged Deception)**

28 Plaintiffs' Consolidated Class Action Complaint and the alleged claims in it are barred, in whole
 or in part, because Plaintiffs and members of the putative class proceeded with knowledge and/or

1 awareness of the occurrences that form the bases of their claims as alleged in the Complaint and thus
2 were not deceived.

3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**
4 **(Speculative Remedies)**

5 Plaintiffs' claims are barred, in whole or in part, because the remedies sought are speculative,
6 remote, and impossible to ascertain.

7 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**
8 **(Improper Request for Attorneys' Fees)**

9 Plaintiffs' request for attorneys' fees in this matter is barred because it lacks any basis in law or
10 contract.

11 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**
12 **(Protection from Excessive Fines)**

13 In the alternative, without admitting any liability whatsoever and without admitting that
14 Plaintiffs have suffered any purported loss or damage whatsoever, Plaintiffs' Consolidated Class Action
15 Complaint and the alleged claims in it are barred to the extent Plaintiffs seek exemplary or punitive
16 damages, because such damages violate Meta's right to protection from excessive fines.

17 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**
18 **(Civil Code Section 3294)**

19 Any award of punitive damages is barred under Civil Code Section 3294 and other provisions
20 of law.

21 **TWENTY-NINTH AFFIRMATIVE DEFENSE**
22 **(Unauthorized Remedies)**

23 Plaintiffs' Consolidated Class Action Complaint and the alleged claims in it are barred in whole
24 or in part because the remedies sought are unconstitutional, contrary to public policy, otherwise
25 unauthorized, or not recognized by applicable state law.

26 **THIRTIETH AFFIRMATIVE DEFENSE**
27 **(Double Recovery)**

28 Plaintiffs' Consolidated Class Action Complaint and the alleged claims in it are barred to the
extent that Plaintiffs or the putative class members recover or have recovered any alleged damages
already or from sources other than Meta.

ADDITIONAL AFFIRMATIVE DEFENSES

Flo may have additional defenses that cannot be articulated at this time. Flo therefore does not waive any defenses and reserves the right to assert additional defenses.

PRAYER FOR RELIEF

WHEREFORE, Flo prays for judgment as follows:

1. That all relief requested in the Complaint be denied;
2. That Plaintiffs and the members of the putative class take nothing by virtue of this action;
3. Awarding Flo reasonable attorneys' fees, costs, and expenses; and
4. For such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Flo demands a jury trial as to all issues triable by a jury.

1 DATED: August 8, 2022

RESPECTFULLY SUBMITTED,

2
3 /s/ Brenda R. Sharton

4 Brenda R. Sharton (Admitted Pro Hac Vice)

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